

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

**JESSE JAMES RAYBURN
ADC #153338**

PLAINTIFF

v.

No. 2:14-cv-7-DPM-JTR

**SIDNEY LARRY, Corporal, East Arkansas
Regional Unit, ADC and DONALD HEATH,
Lieutenant, East Arkansas Regional Unit, ADC**

DEFENDANTS

ORDER

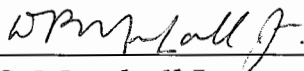
1. Opposed recommendation, *No* 29, adopted as supplemented, and objections, *No* 31, overruled, on *de novo* review. The motion for summary judgment, *No* 22, is granted in part and denied in part. Having obtained a favorable decision from the Warden, Rayburn did not need to take any further steps to exhaust in the circumstances. Moreover, the record reveals that an investigation of Rayburn's 03236 grievance involved Corporal Lenny Larry and Lieutenant Donald Heath, and the appeal was decided on the merits. This involvement is enough to overcome Rayburn's failure to specifically name Larry and Heath in the grievance. *Burns v. Eaton*, 752 F.3d 1136, 1141 (8th Cir. 2014); *Hammett v. Cofield*, 681 F.3d 945, 948 (8th Cir. 2012). Rayburn's

03236 grievance was fully exhausted.

2. Defendant Sidney Larry had no involvement with the alleged incident. He is therefore dismissed without prejudice. Rayburn's claims against Heath in his official capacity are dismissed without prejudice.

3. Motion to amend, *No. 30*, granted. It is clear from Rayburn's response to the motion for summary judgment that he used the phrase "official capacity" in relation to the Defendants acting under color of law and not in terms of the remedy sought. The Clerk shall docket *No. 30* as a Supplement to the Amended Complaint, *No. 8*. Lenny Larry should be added as a defendant. Larry and Heath should be named in their individual capacities. The Court appreciates Magistrate Judge Ray handling bringing Larry into the case, as well as all further pre-trial proceedings.

So Ordered.



D.P. Marshall Jr.
United States District Judge

6 October 2014